

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

Petition of SBC for Forbearance From  
the Prohibition of Sharing Operating,  
Installation and Maintenance Functions  
Under Sections 53.203(a)(2) and  
53.203(a)(3) of the Commission's Rules  
and Modification of Operating, Installation  
and Maintenance Conditions Contained in  
the SBC/Ameritech Merger Order

CC Docket No. 96-149

CC Docket No. 98-141

REQUEST THAT MATERIALS OR INFORMATION SUBMITTED TO THE  
COMMISSION BE WITHHELD FROM PUBLIC INSPECTION

SBC Communications Inc., on behalf of itself and its subsidiaries (collectively referred to as "SBC"), hereby requests, pursuant to section 0.459 of the Commission's Rules,<sup>1</sup> and consistent with the provisions of the Freedom of Information Act,<sup>2</sup> that the Federal Communications Commission (the "Commission") treat as confidential and withhold from public inspection the data submitted with this request.

On June 5, 2003, SBC filed a Petition for Forbearance and Modification asking the Commission to forbear from enforcing sections 53.203(a)(2) and 53.203(a)(3) of the it's Rules,<sup>3</sup> which prohibit sharing of operating, installation, and maintenance ("OI&M") functions by section 272 affiliates and Bell operating companies ("BOCs") and by section 272 affiliates and other affiliates of the BOCs. SBC also asked the Commission to

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<sup>1</sup> 47 C.F.R. §0.459.

<sup>2</sup> 5 U.S.C. §552.

<sup>3</sup> 47 C.F.R. §53.203(a)(2)-(3).

modify the provisions of the *SBC/Ameritech Merger Order*<sup>4</sup> that restrict the sharing of OI&M services.<sup>5</sup> Accompanying the Petition, SBC filed a Declaration of Richard Dietz, President and CEO of SBC Data Services, Inc., which, *inter alia*, set forth the costs and burdens imposed on SBC and on consumers by the OI&M restrictions and the savings that could be achieved by grant of the requested relief.

The financial information submitted today for which confidential treatment is sought is competitively sensitive, proprietary financial data not otherwise made publicly available. It provides the detailed cost calculations and back-up support for the financial data provided in the Dietz affidavit. As such, it is “more akin to the type of information requested by the Commission in the review of an application for license transfer than a typical rulemaking.”<sup>6</sup> Each page of the documents is marked: “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER REQUESTED IN CC DOCKET NOS. 96-149 and 98-141 before the Federal Communications Commission.”

The Freedom of Information Act recognizes that “trade secrets and commercial or financial information obtained from a person and privileged or confidential” should be protected and are therefore exempt from the disclosure requirements of that Act.<sup>7</sup>

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<sup>4</sup> *In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control*, Memorandum Opinion and Order, 14 FCC Rcd. 14712 (1999) (“*SBC/Ameritech Merger Order*”).

<sup>5</sup> In addition, the Commission was asked to make clear that the elimination of the OI&M restrictions would not affect the relief from tariffing it granted in *In re Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Memorandum Opinion and Order, 17 FCC Rcd. 27,000 (2002) (“*ASI Tariffing Forbearance Order*”).

<sup>6</sup> Verizon Petition for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2) Of The Commission’s Rules, Order, ¶ 3 (rel. May 22, 2003) (“*Verizon Forbearance Protective Order*”).

<sup>7</sup> 5 U.S.C. §552(b)(4).

Pursuant to section 0.459 of the Commission's Rules, in support of its request for confidential treatment SBC provides the following statement of the reasons for withholding the materials from inspection and the relevant facts.

(1) Identification of the specific information for which confidential treatment is sought:

Confidential treatment is sought with respect to detailed, competitively sensitive financial information relating to the costs incurred by SBC and its affiliates to comply with the Commission's OI&M restrictions and the savings that could be obtained by grant of the pending Petition. The documents setting forth that information are marked: "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER REQUESTED IN CC DOCKET NOS. 96-149 and 98-141 before the Federal Communications Commission."

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission:

The confidential information is being submitted as part of an *ex parte* filing by SBC in support of the Declaration of Richard Dietz accompanying the SBC Petition in the above-captioned dockets (CC Docket Nos. 96-149 and 98-141).

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged:

SBC is seeking confidential treatment of detailed, competitively sensitive financial information relating to the costs incurred by SBC and its affiliates to comply

with the Commission's OI&M restrictions and the savings that could be obtained by grant of the pending Petition. This information is treated by the company as commercially significant and proprietary and not available to the public.

(4) Explanation of the degree to which the information concerns a service that is subject to competition:

The information for which protection is sought relates to the costs incurred by SBC and its affiliates in the provision of long distance services, advanced services and local services, all subject to significant competitive offerings from a variety of competitors. Indeed, a key basis of the Petition to which this information relates is the competitive disadvantage the Commission's OI&M rules place on SBC, particularly with respect to the highly competitive offering of end-to-end services and packages of services to medium-sized and large businesses.

(5) Explanation of how disclosure of the information could result in substantial competitive harm:

As noted, the information for which protection is sought relates to the costs incurred by SBC and its affiliates in the provision of long distance services, advanced services and local services, all subject to significant competitive offerings from a variety of competitors. It describes how SBC and its affiliates provide those services today, and how they hope to be able to provide them tomorrow. Knowing SBC's detailed costs, including specifically the artificially-imposed additional costs of operating within the OI&M restrictions, and how consolidation and cost-savings might be implemented if the Petition were granted, would provide competitors with sensitive information useful in

developing their competing bids to provide services to customers and aid in their business planning and investment decisions. Disclosure would harm SBC further because these same companies protect their own cost data and internal business coordination plans from being revealed to competitors like SBC.

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure:

The information which SBC is asking the Commission to treat as confidential is treated by the company as commercially significant and proprietary and not available to the public. Access to such data even by SBC employees is limited to a “need-to-know” basis and use is limited.

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties:

The information at issue here is not available to the public. SBC would not make such data available, even in regulatory proceedings, without a request for confidential treatment. This information has not previously been disclosed.

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure:

In light of the commercially and competitively-sensitive nature of the information, SBC believes that the documents should be treated pursuant to protective order for the foreseeable future. There is no predetermined point at which a competitor might not be unfairly advantaged – and SBC harmed -- by unrestricted access to SBC’s cost data and possible consolidation and competitive business plans.

(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted:

The Commission has already found in an analogous proceeding that the types of proprietary cost data and consolidation plans relevant to a possible lifting of OI&M restrictions should be accorded confidential treatment when filed with the Commission.<sup>8</sup> While SBC believes that the subject data should not be made available under any circumstances, SBC is willing to accept the same treatment accorded to the information submitted in that proceeding, namely the imposition of a carefully crafted and comprehensive protective order to limit and control disclosure. A draft protective order to accomplish that end is attached hereto as Appendix A.

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<sup>8</sup> *Verizon Forbearance Protective Order*, ¶ 3

Because of the competitively sensitive nature of the evidence with respect to costs, business operations and business plans being submitted here, any inspection of the documents by anyone outside the Commission should be limited, and should be subject to a protective order similar to the draft protective order attached hereto as Appendix A. SBC also seeks sufficient advance notice of any other proposed disclosure to allow other actions to protect its interests in the confidentiality of the information.

Respectfully submitted,



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June 16, 2003

## APPENDIX A

### Protective Order

CC Docket Nos. 96-149 and 98-141

1. *Introduction.* We anticipate that SBC (hereinafter referred to as the “Submitting Party”) may need to rely on commercially sensitive business information or other confidential or proprietary information in order to provide evidence in support of its petition for forbearance and modification and meaningful answers to the questions raised by the record and therefore, such documents should be made available pursuant to a Protective Order. Consequently, the Wireline Competition Bureau (Bureau) has adopted this Protective Order to ensure that any confidential or proprietary documents submitted by the Submitting Party is afforded adequate protection. This Protective Order does not constitute a resolution of the merits concerning whether any confidential information would be released publicly by the Commission upon a proper request under the Freedom of Information Act (FOIA) or otherwise.

2. *Definitions.* As used herein, capitalized terms, not otherwise defined herein, shall have the following meanings:

“Confidential Information” means information contained in Stamped Confidential Documents or derived therefrom that is not otherwise available from publicly available sources;

“Counsel” means In-House Counsel and Outside Counsel of Record;

“In-House Counsel” means the attorney (or attorneys) employed by a party to these proceedings or who is employed by an affiliated entity and who is actively engaged in the conduct of this proceeding, *provided that*, such counsel is not involved in competitive decision-making, *i.e.*, In-House Counsel’s activities, association, and relationship with a client are not such as to involve such counsel’s advice and participation in any or all of the client’s business decisions made in light of similar or corresponding information about a competitor; and

“Outside Counsel of Record” means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in these proceedings.

3. *Use of Confidential Information.* Persons obtaining access to Confidential Information (including Stamped Confidential Documents (as hereinafter defined)) under this Protective Order shall use the information solely for preparation and the conduct of this proceeding as delimited in this paragraph and paragraphs 5, 10, and 11, and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Confidential Documents



or Confidential Information in its decision in this proceeding, it will do so in the same manner in which it maintained the confidentiality of similar protected information in the *SBC/Ameritech Merger Order*, 14 FCC Rcd. 14712 (1999).

4. *Non-Disclosure of Stamped Confidential Documents.* Except with the prior written consent of the Submitting Party, or as hereinafter provided under this Protective Order, neither a Stamped Confidential Document nor any Confidential Information may be disclosed by a reviewing party to any person other than the Commission and its staff. A "Stamped Confidential Document" shall mean any document, or part thereof, that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN CC DOCKET NOS. 96-149 and 98-141 before the Federal Communications Commission" or "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER REQUESTED IN CC DOCKET NOS. 96-149 and 98-141 before the Federal Communications Commission" to signify that it contains information that the Submitting Party believes should be subject to protection under FOIA and the Commission's implementing rules, unless the Commission determines, *sua sponte* or by request pursuant to Sections 0.459 or 0.461 of its rules, that any such document is not entitled to confidential treatment. For purposes of this Protective Order, the term "document" means all written, recorded, electronically stored, or graphic material, whether produced or created by the reviewing party or another person.

5. *Permissible Disclosure.* Subject to the requirements of paragraph 8, Stamped Confidential Documents may be reviewed by Counsel. Subject to the requirements of paragraph 8, Counsel may disclose Stamped Confidential Documents and other Confidential Information to: (1) outside consultants or experts retained for the purpose of assisting Counsel in this proceeding, *provided, that*, the outside consultants or experts are not involved in the analysis underlying the business decisions of any competitor of the Submitting Party nor do they participate directly in those business decisions; (2) paralegals or other employees of such Counsel not described in clause 3 of this paragraph 5 assisting Counsel in this proceeding; (3) employees of such Counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding; and (4) employees of third-party contractors performing one or more of the functions set forth in clause 3 of this paragraph 5. Individuals who have obtained access to Stamped Confidential Documents and Confidential Information in accordance with the provisions of this paragraph 5 and paragraph 8 may discuss and share the contents of the Stamped Confidential Documents and Confidential Information with any other person who has also obtained access in accordance with the provisions of this paragraph 5 and paragraph 8, and with the Commission and its staff.

6. *Protection of Stamped Confidential Documents and Confidential Information.* Persons described in paragraph 5 shall have the obligation to ensure that access to Stamped Confidential Documents and Confidential Information is strictly

limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure that: (1) Stamped Confidential Documents and Confidential Information are used only as provided in this Protective Order; and (2) Stamped Confidential Documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 10 below.

7. *Prohibited Copying.* If, in the judgment of the Submitting Party, a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited," and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to Outside Counsel of Record for the Submitting Party.

8. *Procedures for Obtaining Access to Confidential Documents.* In all cases where access to Stamped Confidential Documents and Confidential Information is permitted pursuant to paragraph 5, before reviewing or having access to any Stamped Confidential Documents or Confidential Information, each person seeking such access shall execute the Acknowledgment of Confidentiality ("Acknowledgment") (see Appendix B) and file it with the Bureau, on behalf of the Commission, and serve it upon the Submitting Party through its Outside Counsel of Record so that the Acknowledgment is received by the Submitting Party at least five business days prior to such person's reviewing or having access to such Submitting Party's Stamped Confidential Documents or Confidential Information. Where the person seeking access is one described in either clause 3 or 4 of paragraph 5, the Acknowledgment shall be delivered promptly prior to the person's obtaining access. The Submitting Party shall have an opportunity to object to the disclosure of Stamped Confidential Documents to any such persons. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in either clause 3 or 4 of paragraph 5, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from the Submitting Party shall not have access to Stamped Confidential Documents or Confidential Information. The Submitting Party shall make available for review the Stamped Confidential Documents of such party at the offices of such party's Outside Counsel of Record or, if the Submitting Party does not have Outside Counsel of Record, at the offices of such party's In-House Counsel.

9. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information outside the terms of this Protective Order, requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

10. *Filings with the Commission.* Persons described in paragraph 5 may, in any documents that they file in this proceeding, reference Confidential Information, but only if they comply with the following procedure:

- a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;
- b. The portions of pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Protective Order;
- c. Each page of any party's filing that contains or discloses Confidential Information subject to this order must be clearly marked: "Confidential Information included pursuant to Protective Order, CC Docket Nos. 96-149 and 98-141;" and
- d. The confidential portion(s) of the pleading shall be served on the Secretary of the Commission, the Bureau, and the Submitting Party. Such confidential portions shall be served under seal, and shall not be placed in the Commission's public file. A party filing a pleading containing Confidential Information shall also file redacted copies of the pleading containing no Confidential Information, which copies shall be placed in the Commission's public files. Parties should not provide courtesy copies of pleadings containing Confidential Information to Commission Staff unless the Bureau so requests. Any courtesy copies shall be submitted under seal.

11. *Client Consultation.* Nothing in this order shall prevent or otherwise restrict Counsel from, rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Confidential Documents or Confidential Information; provided, however, that in rendering such advice and otherwise communicating with such client, Counsel shall not disclose Stamped Confidential Documents or Confidential Information.

12. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Information by the Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

13. *Subpoena by Courts, Departments or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of Stamped Confidential Documents or Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify the Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document or Confidential Information.

14. *Violations of Protective Order.* Should a person that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person using Confidential Information in a manner not authorized by this Protective Order.

15. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 5 shall destroy or return to the Submitting Party Stamped Confidential Documents and all copies of the same. No material whatsoever derived from Stamped Confidential Documents may be retained by any person having access thereto, except Counsel (as described in paragraph 5) may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) containing Confidential Information prepared on behalf of that party. All Counsel shall make certification of compliance herewith and shall deliver the same to Counsel for the Submitting Party not more than three weeks after conclusion of this proceeding. The provisions of this paragraph 15 regarding retention of Stamped Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.  
Chief, Wireline Competition Bureau

**Acknowledgment of Confidentiality**

**CC Docket Nos. 96-149 and 98-141**

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents or Confidential Information except as allowed by the Protective Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as Counsel or consultant to a party or other person described in paragraph 5 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Protective Order.

I hereby certify that I am not involved in "competitive decision-making" as that term is used in the definition of In-House Counsel in paragraph 2 of the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Stamped Confidential Documents and Confidential Information are used only as provided in the Protective Order; and (2) Stamped Confidential Documents are not duplicated except as specifically permitted by the terms of paragraph 10 of the Protective Order, and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of Stamped Confidential Documents or Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
[Name]

[Position]

[Address]

[Telephone]